

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	10-CR-367 (VEC)
-against-	:	
	:	<u>ORDER</u>
	:	
JOHNNY NUNEZ GARCIA,	:	
	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS Defendant Johnny Nunez Garcia filed a petition to vacate his conviction and sentence, pursuant to 28 U.S.C. § 2255 (Dkt. 260);

WHEREAS on August 1, 2019, the Court ruled that Petitioner's petition was meritless, but held the petition in abeyance pending Petitioner's filing a motion for leave to amend the petition (Dkt. 276);

WHEREAS on November 4, 2019, Petitioner filed a motion for leave to amend his petition (Dkt. 280);

WHEREAS Petitioner's motion to amend the petition does not change Petitioner's underlying argument and raises no grounds for relief other than those discussed in the August 1, 2019 order;

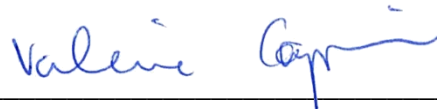
IT IS HEREBY ORDERED THAT

1. Defendant's motion for leave to amend the petition is **DENIED** as futile in light of the conclusions reached in the August 1, 2019 order (Dkt. 276);
2. Defendant's petition is **DENIED** for the reasons discussed in the August 1, 2019 order.

The Clerk of Court is respectfully directed to **CLOSE** the open motion at Dkt. 280, to mail a copy of this order to Defendant Johnny Nunez Garcia, and to note mailing on the docket. The Court declines to issue a certificate of appealability from this order, as Defendant has not, to this date, made a substantial showing of a denial of a constitutional right. *See Matthews v. United States*, 682 F.3d 180, 185 (2d Cir. 2012). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and permission to proceed *in forma pauperis* is therefore denied.

**SO ORDERED.**

**Date: December 9, 2019**  
**New York, New York**



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**VALERIE CAPRONI**  
**United States District Judge**